

## REMARKS

Claims 1-10 and 25-33, as amended, now appear in this application for the Examiner's review and consideration. In particular, claim 1 was amended to recite that the packaging sleeve is formed in a shape that corresponds to the desired shape of the outer surface of the shell, that has an inner surface that is in contact with the outer surface of the shell to form and display the pattern. Claims 2 and 29 have been amended for clarity while claims 5 and 7 have been amended to recite preferred embodiments that are disclosed by the specification and drawings. As none of these changes introduces new matter, they should be entered at this time.

Claim 31 was rejected for lack of enablement regarding how a chocolate shell containing inclusions such as nuts, chocolate chips, or biscuit crumbles can be smooth. Applicants traverse this rejection since a skilled artisan can fully understand how to make the invention from the present disclosure. Claim 1 recites that the shell wall has a substantially smooth outer surface, and this surface is provided when the confectioneries used to form the shell are applied onto the inner surface of the packaging sleeve. As the confectioneries are applied in molten or liquid form, or as they are pressed against the sleeve when present in a mold, they would conform to the surface condition of the sleeve and thus have a smooth and preferably shiny outer surface. As to the inclusions, these would extend towards the center of the cone through the inner surface of the shell if the inclusions are larger than the thickness of the shell, or if provided in sizes that are smaller than the thickness of the shell, they would be located within that shell thickness. In either situation, the outer wall of the shell is smooth, and when the inclusions are provided in sizes that are smaller than the thickness of the shell, the inner surface of the shell would also be smooth. Since the consumer would only see the outer surface of the shell, it is this surface that is made smooth and that is claimed that way. For these reasons, the rejection has been overcome and should be withdrawn.

Claims 1-4, 8-10, 25, 26, 28, 30, and 32 were rejected as being unpatentable over the combination of US patent 6,235,324 to Luigi Grigoli et al. ("Grigoli")\* and European patent application 08 48 910 to Kuehl et al. ("Kuehl"). In addition, certain tertiary references were cited against some of the dependent claims. Claims 5-7 and 29-33 were rejected over the prior combination with the addition of EP 02 76 333 to Damato, claim 27 with the addition of Tanaka

---

\* Please note that the Grigoli patent is not listed on the PTO-892 form that was provided with the office action. Applicants respectfully request that this patent be made of record in the Examiner's reply.

et al. JP2000-118590 ("Tanaka") and claim 31 with the addition of Selbak US patent 5,425,557. The Examiner's reasoning in support of these rejections appears on pages 2-7 of the action.

Grigoli discloses a composite ice-cream cone having a preformed, closed-bottomed wafer shell. The shell has an inner surface, a length, an outer surface and an upper edge. A separate, preformed, closed-bottomed chocolate shell has a lower portion, an upper portion and a filling of a frozen product contained in both the lower and upper portions. The lower portion of the chocolate shell is insertedly nested within the wafer shell with the lower portion having a form complimentary to the inner surface of the wafer shell such that lower portion extends over both the entire inner surface of the wafer shell and the length of the wafer shell.

As noted, independent claim 1 has been amended to recite that the packaging sleeve is formed in a shape that corresponds to the desired shape of the outer surface of the shell and has an inner surface that is in contact with the outer surface of the shell to form and display the pattern. This contact provides the shell with a substantially smooth outer surface. As Grigoli does not disclose these features, the rejection has been overcome and should be withdrawn.

The claims are also not obvious from the disclosure of Grigoli. Grigoli does not disclose, teach or suggest a confectionery cone in contact with a packaging sleeve wherein two different color confectioneries are present as recited in independent claim 1. Instead, as noted above, Grigoli inserts a confectionery cone into a wafer cone which is present within an outer wrapper. The confectionery cone is sized to fit within the wafer and extend above it. With this construction, Grigoli utilizes the chocolate shell to protect the wafer from contacting the ice cream so that the wafer does not become moistened by the ice cream with subsequent loss of crispness.

As acknowledged in the office action, Grigoli does not include a pattern of strings made of different colored confectionery materials. In fact, by inserting his chocolate cone into the wafer, there would be no advantage in appearance of Grigoli's product, since the consumer would only see a wafer cone and not the chocolate inner cone. In addition, the outer surface of Grigoli's chocolate cone does not have to be smooth, since it is neither visible to the user nor is it in contact with the sleeve. Instead, the chocolate cone is inserted in the wafer cone to protect it.

Grigoli's process is more complicated than that of the present invention. Instead of utilizing a packaging sleeve to enable formation of the confectionery cone and support it after

formation, Grigoli manufactures his chocolate cone separately and then inserts it into the wafer cone. This is more complicated and requires that the chocolate cone be solidified for handling and insertion into the wafer cone. In contrast, the present invention utilizes the packaging sleeve as a mold to enable formation of the confectionery cone and also assures that the outer surface of the chocolate cone is smooth. The different colored confectioner materials can be provided in various arrangements including with patterns messages, even writing in block or script to provide a pleasing and desirable appearance to the outer surface of the cone. This is why in a preferred embodiment, the packaging sleeve is transparent, as it enables the message or pattern to be observable to the consumer upon purchase of the product. As Grigoli has none of these features or advantages, the additional references are cited in an attempt to make up for its deficiencies.

The Kuehl reference is owned by the present assignee and is well known to the present inventors. Kuehl, however, does not disclose or teach the present invention. Kuehl does show how to provide interesting appearances on ice confections, but these are provided on the outer surface of products such as ice cream bars. Kuehl has no teaching of how to apply such coatings on the inner surface of a cone. In fact, it would take a significant re-design of Kuehl's equipment to provide the presently claimed string pattern. More importantly, the maintenance of a smooth outer surface is not of significance to Kuehl's products. Kuehl is more interested in providing an interesting appearance, but smoothness is incidental and requires an additional step to accomplish. In contrast, applicants' product is made in a much less complicated manner, with the strings being provided to conform to and be in contact with a packaging sleeve of similar dimensions during formation of the shell so that a smooth outer surface is automatically achieved during formation of the product. For all these reasons, the combination of Kuehl with Grigoli does not result in the present invention, and this rejection should be withdrawn.

The same is true of the additional references that were cited against claims 5-7, 29 and 33 (Damato), claim 27 (Tanaka) and 31 (Selbak). None of these patents remedy the deficiencies of Grigoli, Kuehl or the combination of Grigoli and Kuehl to result in the presently claimed products. Thus, the rejections of those claims abased on these additional patents have also been overcome and should be withdrawn.

Furthermore, the use of a protective packaging sleeve provides a number of unexpected advantages. The packaging sleeve assists to prevent damage to and contamination of the exposed product prior to wrapping. Also, the open end of the package sleeve provides a

convenient location for affixing a lid to seal the confection within the packaging without the need for other packaging operations, such as the conventionally used flow wrapping materials. Thus, the invention provides a product that has appealing features and that is produced by an unexpectedly simplified manufacturing and packaging operation using the packaging sleeve, preferably one that is transparent, both as a support for making the confectionery shell and as the final packaging for the product. These rejections should therefore be withdrawn.

The claims were provisionally rejected for obviousness type double patenting over the claims of copending applications 10/294,764, 10/385,177, 10/800,222 and 10/984,914. As the provision has not occurred in any of those applications and since the claims of this application are otherwise allowable, these rejections should be withdrawn. Should any or all of those other applications be allowed by the time that the Examiner acts upon this response, the applicants will submit, upon telephone request, any necessary disclaimer to place the application in full condition for allowance.

Accordingly, it is believed that the entire application is now in condition for allowance early notice of which would be appreciated. Should the Examiner not agree, then a personal or telephonic interview is respectfully requested to discuss any remaining issues in order to expedite the eventual allowance of this application.

Respectfully submitted,

4/7/16  
Date

  
For: Evert Uy (Reg. No. 57,004)  
Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP  
Customer No. 28765  
212-294-3311